

The House Committee on Public Utilities and Telecommunications offers the following substitute to SB 274:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 25 of the Official Code of Georgia Annotated, the "Georgia
2 Utility Facility Protection Act," so as to revise comprehensively provisions relating to utility
3 facility protection; to add provisions regarding sewer laterals; to revise definitions; to revise
4 provisions relating to design locate requests; to revise provisions relating to the utilities
5 protection center; to provide for commencing excavation or blasting before the end of the
6 waiting period in some circumstances; to revise provisions relating to costs of re-marking;
7 to revise provisions relating to the responsibilities of excavators and facility owners or
8 operators; to provide for responsibilities of sewer system owners or operators with regard to
9 sewer laterals; to provide for immunity from liability in certain circumstances; to provide for
10 attempted location of utility facilities and sewer laterals by excavators in certain
11 circumstances; to provide for installation of sewer laterals in a manner to make them
12 locatable; to provide for use of a locator; to provide for large projects; to provide for the
13 standard of care for trenchless excavation; to revise provisions relating to emergency
14 excavations; to authorize ordinances requiring bonds for excavators; to provide for
15 calculation of damages in certain civil actions; to revise provisions relating to the advisory
16 committee; to revise provisions relating to commission enforcement of the chapter; to restrict
17 imposition of civil penalties on local governing authorities; to provide for recommendations
18 regarding training in lieu of penalties; to provide for findings and offers of settlement; to
19 provide for civil penalties; to provide for related matters; to repeal conflicting laws; and for
20 other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Chapter 9 of Title 25 of the Official Code of Georgia Annotated, the "Georgia Utility Facility
24 Protection Act," is amended by striking Code Section 25-9-2, relating to the purpose of the
25 chapter, and inserting in lieu thereof the following:

S. B. 274 (SUB)

1 "25-9-2.

2 The purpose of this chapter is to protect the public from physical harm, prevent injury to
3 persons and property, and prevent interruptions of utility service resulting from damage to
4 utility facilities and sewer laterals caused by blasting or excavating operations by providing
5 a method whereby the location of utility facilities and sewer laterals will be made known
6 to persons planning to engage in blasting or excavating operations so that such persons may
7 observe proper precautions with respect to such utility facilities and sewer laterals."

8 SECTION 2.

9 Said chapter is further amended by striking Code Section 25-9-3, relating to definitions
10 relative to utility facility protection, and inserting in lieu thereof the following:

11 "25-9-3.

12 As used in this chapter, the term:

13 (1) 'Abandoned utility facility' means a utility facility taken out of service by a facility
14 owner or operator on or after January 1, 2001.

15 (2) 'Blasting' means any operation by which the level or grade of land is changed or by
16 which earth, rock, buildings, structures, or other masses or materials are rended, torn,
17 demolished, moved, or removed by the detonation of dynamite or any other explosive
18 agent.

19 (3) 'Business days' means Monday through Friday, excluding the following holidays:
20 New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence
21 Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and
22 Christmas Day. Any such holiday that falls on a Saturday shall be observed on the
23 preceding Friday. Any such holiday that falls on a Sunday shall be observed on the
24 following Monday.

25 (4) 'Business hours' means the time from 7:00 A.M. to 4:30 P.M. local time on business
26 days.

27 (5) 'Commission' means the Public Service Commission.

28 (6) 'Corporation' means any corporation; municipal corporation; county; authority;
29 joint-stock company; partnership; association; business trust; cooperative; organized
30 group of persons, whether incorporated or not; or receiver or receivers or trustee or
31 trustees of any of the foregoing.

32 (7) 'Damage' means any impact or exposure that results in the need to repair a utility
33 facility or sewer lateral due to the weakening or the partial or complete destruction of the
34 facility or sewer lateral including, but not limited to, the protective coating, lateral
35 support, cathodic protection, or the housing for the line, device, sewer lateral, or facility.

(8) 'Design locate request' means a communication to the utilities protection center in which a request for locating existing utility facilities for bidding, predesign, or advance planning purposes is made. A design locate request may not be used for excavation purposes.

(9) 'Designate' means to stake or mark on the surface of the tract or parcel of land the location of a utility facility or sewer lateral.

~~(9)~~(10) 'Emergency' means a sudden or unforeseen occurrence involving a clear and imminent danger to life, health, or property; the interruption of utility services; or repairs to transportation facilities that require immediate action.

~~(10)~~(11) 'Emergency notice' means a communication to the utilities protection center to alert the involved facility owners or operators of the need to excavate due to an emergency that requires immediate excavation.

~~(11)~~(12) 'Excavating' means any operation by which the level or grade of land is changed or earth, rock, or other material below existing grade is moved and includes, without limitation, grading, trenching, digging, ditching, augering, scraping, directional boring, and pile driving. Such term, however, does not include routine road surface scraping maintenance. 'Excavating' shall not ~~mean~~ include pavement milling or pavement repair that does not exceed the depth of the existing pavement or 12 inches, whichever is less. The term shall not include other routine roadway maintenance activities carried out by ~~employees of the Georgia Department of Transportation acting within the scope of their employment~~ road maintenance or railroad employees or contractors, provided that such activities occur entirely within the right of way of a public road, street, railroad, or highway of the state; are carried out with reasonable care so as to protect any utility facilities and sewer laterals placed in the right of way by permit; are carried out within the limits of any original excavation on the traveled way, shoulders, or drainage ~~features~~ ditches of a public road, street, railroad, or highway, and do not exceed 18 inches in depth below the grade existing prior to such activities; and, if involving the replacement of existing structures, replace such structures in their previous locations and at their previous depth. 'Excavating' shall not include normal farming activities.

~~(12)~~(13) 'Excavator' means any person engaged in excavating or blasting as defined in this Code section.

~~(13)~~(14) 'Extraordinary circumstances' means circumstances other than normal operating conditions which exist and make it impractical or impossible for a facility owner or operator to comply with the provisions of this chapter. Such extraordinary circumstances may include, but shall not be limited to, hurricanes, tornadoes, floods, ice and snow, and acts of God.

1 ~~(14)~~(15) 'Facility owner or operator' means any person or entity with the sole exception
2 of a homeowner who owns, operates, or controls the operation of a utility facility, ~~as~~
3 ~~defined in this Code section, for the purpose of commercial enterprise.~~

4 (16) 'Horizontal directional drilling' or 'HDD' means a type of trenchless excavation that
5 uses guidable boring equipment to excavate in an essentially horizontal plane without
6 disturbing or with minimal disturbance to the ground surface.

7 (17) 'Large project' means an excavation that involves more work to locate utility
8 facilities than can reasonably be completed within the requirements of subsection (a) of
9 Code Section 25-9-7.

10 (18) 'Local governing authority' means a county, municipality, or local authority created
11 by or pursuant to general, local, or special Act of the General Assembly, or by the
12 Constitution of the State of Georgia. The term also includes any local authority that is
13 created or activated by an appropriate ordinance or resolution of the governing body of
14 a county or municipality individually or jointly with other political subdivisions of this
15 state.

16 ~~(15)~~(19) 'Locate request' means a communication between an excavator and the utilities
17 protection center in which a request for locating utility facilities, sewer laterals, or both
18 is processed.

19 (20) 'Locator' means a person who is acting on behalf of facility owners and operators
20 in designating the location of the utility facilities and sewer laterals of such owners and
21 operators.

22 ~~(16)~~(21) 'Mechanized excavating equipment' means all equipment which is powered by
23 any motor, engine, or hydraulic or pneumatic device and which is used for excavating.

24 (22) 'Minimally intrusive excavation methods' means methods of excavation that
25 minimize the potential for damage to utility facilities and sewer laterals. Examples
26 include, but are not limited to, air entrainment/vacuum extraction systems and water
27 jet/vacuum excavation systems operated by qualified personnel and careful hand tool
28 usage and other methods as determined by the Public Service Commission. The term does
29 not include the use of trenchless excavation.

30 (23) 'Permanent marker' means a visible indication of the approximate location of a
31 utility facility or sewer lateral that can reasonably be expected to remain in position for
32 the life of the facility. The term includes, but is not limited to, sewer cleanouts; water
33 meter boxes; and etching, cutting, or attaching medallions or other industry accepted
34 surface markers to curbing, pavement, or other similar visible fixed surfaces. All
35 permanent markers other than sewer cleanouts, water meter boxes, or any other visible
36 component of a utility facility that establish the exact location of the facility must be
37 placed accurately in accordance with Code Section 25-9-9 and be located within the

1 public right of way. Sewer cleanouts, water meter boxes, or any other visible component
2 of a utility facility that establishes the exact location of the facility must be located within
3 ten feet of the public right of way to be considered a permanent marker.

4 ~~(17)~~(24) 'Person' means an individual, firm, joint venture, partnership, association,
5 ~~municipality~~ local governing authority, state, or other governmental unit, authority,
6 department, agency, or a corporation and shall include any trustee, receiver, assignee,
7 employee, agent, or personal representative thereof.

8 (25) 'Positive response information system' or 'PRIS' means the automated information
9 system operated and maintained by the utilities protection center at its location that allows
10 excavators, locators, facility owners or operators, and other affected parties to determine
11 the status of a locate request or design locate request.

12 ~~(18)~~(26) 'Service area' means a contiguous area or territory which encompasses the
13 distribution system or network of utility facilities by means of which a facility owner or
14 operator provides utility service.

15 ~~(19) 'Ticket Information Exchange System' means the automated information system to~~
16 ~~be installed and operated by the utilities protection center that will allow the excavator~~
17 ~~to determine locate ticket status from information provided by the facility owner or~~
18 ~~operator.~~

19 (27) 'Sewer lateral' means an individual customer service line which transports waste
20 water from one or more building units to a utility owned sewer facility.

21 (28) 'Sewer system owner or operator' means the owner or operator of a sewer system.
22 Sewer systems shall be considered to extend to the connection to the customer's facilities.

23 (29) 'Traffic control devices' means all roadway or railroad signs, sign structures, or
24 signals and all associated infrastructure on which the public relies for informational,
25 regulatory, or warning messages concerning the public or railroad rights of way.

26 (30) 'Traffic management system' means a network of traffic control devices, monitoring
27 sensors, and personnel, with all associated communications and power services, including
28 all system control and management centers.

29 ~~(20)~~(31) 'Tolerance zone' means the width of the utility facility or sewer lateral plus 24
30 inches on either side of the outside edge of the utility facility or sewer lateral on a
31 horizontal plane.

32 (32) 'Trenchless excavation' means a method of excavation that uses boring equipment
33 to excavate with minimal or no disturbance to the ground surface and includes horizontal
34 directional drilling.

35 (33) 'Unlocatable facility' means an underground facility that cannot be marked with
36 reasonable accuracy using generally accepted techniques or equipment commonly used
37 to designate utility facilities and sewer laterals. This term includes, but is not limited to,

nonconductive utility facilities and sewer laterals and nonmetallic underground facilities that have no trace wires or records that indicate a specific location.

~~(21)~~(33) 'Utilities protection center' or ~~'center'~~ 'UPC' means the corporation or other organization formed by facility owners or operators to provide a joint ~~telephone number~~ notification service for the purpose of receiving advance notification from persons planning to blast or excavate and distributing such notifications to its affected facility owner or operator members.

~~(22)~~(34) 'Utility facility' means an underground or submerged conductor, pipe, or structure used or installed for use in providing electric or communications service; or ~~an underground or submerged pipe used~~ in carrying, providing, or gathering gas, oil or oil products, sewage, waste water, storm drainage, or water or other liquids, ~~and appurtenances thereto. This does not include utility facilities owned by a homeowner for service at the homeowner's residence. All utility facilities shall be considered to extend up to the connection to the customer's facilities. The term does not include traffic control devices, traffic management systems, or sewer laterals."~~

SECTION 3.

Said chapter is further amended by striking Code Section 25-9-4, relating to design locate requests and responses, and inserting in lieu thereof the following:

"25-9-4.

(a) Any person may submit a design locate request to the ~~utilities protection center~~ UPC.

Such design locate request shall:

(1) Describe the tract or parcel of land for which the design locate request has been submitted with sufficient particularity, as defined by policies developed and promulgated by the ~~utilities protection center~~ UPC, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved; and

(2) State the name, address, and telephone number of the person who has submitted the design locate request, as well as the name, address, and telephone number of any other person authorized to review any records subject to inspection as provided in paragraph

(3) of subsection (b) of this Code section.

(b) Within ten working days after a design locate request has been submitted to the ~~utilities protection center~~ UPC for a proposed project, the facility owner or operator shall respond by one of the following methods:

(1) Designate or cause to be designated by a locator in accordance with Code Section 25-9-9 the location of all utility facilities and sewer laterals within the area of the proposed excavation;

(2) Provide to the person submitting the design locate request the best available description of all utility facilities and sewer laterals in the area of proposed excavation, which might include drawings of utility facilities and sewer laterals already built in the area, or other facility records that are maintained by the facility owner or operator; or

(3) Allow the person submitting the design locate request or any other authorized person to inspect or copy the drawings or other records for all utility facilities and sewer laterals within the proposed area of excavation.

(c) Upon responding using any of the methods provided in subsection (b) of this Code section, the facility owner or operator shall provide the response to the UPC in accordance with UPC procedures."

SECTION 4.

Said chapter is further amended by striking Code Section 25-9-5, relating to cooperation with the utilities protection center and the point of contact list, and inserting in lieu thereof the following:

"25-9-5.

(a) ~~All~~ Except as otherwise provided by subsection (b) of this Code section, all facility owners or operators operating or maintaining utility facilities within the state shall participate as members in and cooperate with the ~~utilities protection center~~ UPC. No duplicative center shall be established. The activities of the ~~center~~ UPC shall be funded by all ~~utilities~~ facility owners or operators.

(b) Persons who install water and sewer facilities or who own such facilities until those facilities are accepted by a local governing authority or other entity are not required to participate as members of the UPC and shall not be considered facility owners or operators. All such persons shall install and maintain permanent markers, as defined in Code Section 25-9-3, identifying all water and sewer facilities at the time of the facility installation. Notwithstanding the above, all owners or operators of water and sewer facilities that provide service from such facilities are considered facility owners or operators and shall be members of the UPC.

(c) The ~~utilities protection center~~ UPC shall maintain a list of the name, address, and telephone number of the office, department, or other source from or through which information respecting the location of utility facilities of its participating facility owners or operators may be obtained during business hours on business days."

SECTION 5.

Said chapter is further amended by striking Code Section 25-9-6, relating to prerequisites to blasting or excavating and marking sites, and inserting in lieu thereof the following:

1 "25-9-6.

2 (a) No person shall commence, perform, or engage in blasting or in excavating with
3 mechanized excavating equipment on any tract or parcel of land in any county in this state
4 unless and until the person planning the blasting or excavating has given 48 hours' notice
5 by submitting a locate request to the ~~utilities protection center~~ UPC, beginning the next
6 business day after such notice is provided, excluding hours during days other than business
7 days. Any person performing excavation is responsible for being aware of all information
8 timely entered into the PRIS prior to the commencement of excavation. If, prior to the
9 expiration of the 48 hour waiting period, all identified facility owners or operators have
10 responded to the locate request, and if all have indicated that their facilities are either not
11 in conflict or have been marked, then the person planning to perform excavation or blasting
12 shall be authorized to commence work, subject to the other requirements of this Code
13 section, without waiting the full 48 hours. The 48 hours' notice shall not be required for
14 excavating where minimally intrusive excavation methods are used exclusively. Any locate
15 request received by the ~~utilities protection center~~ UPC after business hours shall be deemed
16 to have been received by the ~~utilities protection center~~ UPC the next business day. Such
17 locate request shall:

18 (1) Describe the tract or parcel of land upon which the blasting or excavation is to take
19 place with sufficient particularity, as defined by policies developed and promulgated by
20 the ~~utilities protection center~~ UPC, to enable the facility owner or operator to ascertain
21 the precise tract or parcel of land involved;

22 (2) State the name, address, and telephone number of the person who will engage in the
23 blasting or excavating;

24 (3) Describe the type of blasting or excavating to be engaged in by the person; and

25 (4) Designate the date upon which the blasting or excavating will commence.

26 (b) In the event the location upon which the blasting or excavating is to take place cannot
27 be described with sufficient particularity to enable the facility owner or operator to
28 ascertain the precise tract or parcel involved, the person proposing the blasting or
29 excavating shall mark the route or boundary of the site of the proposed blasting or
30 excavating by means of white paint, white stakes, or white flags if practical, or schedule
31 an on-site meeting with the locator or facility owner or operator and inform the ~~utility~~
32 ~~protection center~~ UPC, within a reasonable time, of the results of such meeting.

33 (c) Except as otherwise provided in this subsection, notice given pursuant to subsection
34 (a) of this Code section shall expire 21 calendar days following the date of such notice, and
35 no blasting or excavating undertaken pursuant to this notice shall continue after such time
36 has expired. In the event that the blasting or excavating which is the subject of the notice
37 given pursuant to subsection (a) of this Code section will not be completed within 21

calendar days following the date of such notice, an additional notice must be given in accordance with subsection (a) of this Code section for the locate request to remain valid.

(d) For emergencies, notice shall expire at 7:00 A.M. three business days after the notification is made to the UPC.

~~(d)~~(e) Except for those persons submitting design locate requests, no person, including facility owners or operators, shall request marking of a site through the ~~utilities protection center~~ UPC unless excavating is scheduled to commence. In addition, no person shall make repeated requests for re-marking, unless the repeated request is required for excavating to continue or due to circumstances not reasonably within the control of such person. Any person who willfully fails to comply with this subsection shall be ~~strictly~~ liable to the facility owner or operator for ~~three times the cost of marking the utility facility, not to exceed \$1,000.00~~ \$100.00 or for actual costs, whichever is greater, for each repeated request for re-marking.

~~(e)~~(f) If, subsequent to giving the notice to the ~~utilities protection center~~ UPC required by subsection (a) of this Code section, a person planning excavating determines that such work will require blasting, then such person shall promptly so notify the ~~utilities protection center~~ UPC and shall refrain from any blasting until the facility owner or operator responds within 24 hours, excluding hours during days other than business days, following receipt by the ~~utilities protection center~~ UPC of such notice.

~~(f)~~(g) When a locate request is made in accordance with subsection (a) of this Code section, excavators other than the person planning the blasting or excavating may conduct such activity, provided that the person planning the blasting or excavating shall remain responsible for ensuring that any stakes or other markings placed in accordance with this chapter remain in place and reasonably visible until such blasting or excavating is completed; and provided, further, that such blasting or excavating is:

- (1) Performed on the tract or parcel of land identified in the locate request;
- (2) Performed by a person authorized by and having a contractual relationship with the person planning the blasting or excavating;
- (3) The type of blasting or excavating described in the locate request; and
- (4) Carried out in accordance with all other requirements of this chapter.

(h) Facility owners or operators may bill an excavator their costs for any requests for re-marking other than for re-marks with no more than five individual addresses on a single locate request. Such costs shall be documented actual costs and shall not exceed \$100.00 per re-mark request."

SECTION 6.

Said chapter is further amended by striking Code Section 25-9-7, relating to determining whether utility facilities are present, information to be provided to the utilities protection center, noncompliance, future utility facilities, and abandoned utility facilities, and inserting in lieu thereof the following:

"25-9-7.

(a)(1) Within 48 hours beginning the next business day after the business day following receipt by the ~~utilities protection center~~ UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each facility owner or operator shall determine whether or not utility facilities are located on the tract or parcel of land upon which the excavating or blasting is to occur. If utility facilities are determined to be present, the facility owner or operator shall designate, through stakes, flags, permanent markers, or other marks on the surface of the tract or parcel of land, the location of utility facilities. ~~In the event of extraordinary circumstances, the facility owner or operator shall notify the utilities protection center as provided in subsection (c) of this Code section.~~ This subsection shall not apply to large projects.

(2) Designation ~~Such designation~~ of the location of utility facilities through staking or ~~flagging, permanent markers, or other~~ marking shall be in accordance with the American Public Works Association (APWA) color code in place at the time the location of the utility facility is designated. Additional marking requirements beyond color code, if any, shall be prescribed by rules and regulations promulgated by the Public Service Commission.

(3) A facility owner or operator is not required to mark its own facilities within 48 hours if the facility owner or operator or its agents are the only parties performing the excavation; however, such facilities shall be designated prior to the actual start of excavation.

(b)(1) Within 48 hours beginning the next business day after the business day following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each sewer system owner or operator shall determine whether or not sewer laterals are located or likely to be located on the tract or parcel of land upon which the excavating or blasting is to occur. If sewer laterals are determined to be present or likely to be present, then the sewer system owner or operator shall assist in designating sewer laterals up to the edge of the public right of way. Such assistance shall not constitute ownership or operation of the sewer lateral by the sewer system owner or operator. Good faith compliance with provisions of this subsection in response to a locate request shall constitute full compliance with this

chapter, and no person shall be found liable to any party for damages or injuries as a result of performing in compliance with the requirements of this subsection.

(2) To assist in designating sewer laterals, the sewer system owner or operator shall provide its best available information regarding the location of the sewer laterals to the excavator. This information shall be conveyed to the excavator in a manner that may include, but shall not be limited to, any one of the following methods:

(A) Marking the location of sewer laterals in accordance with subsection (a) of this section, provided that:

(i) Any sewer lateral designated using the best available information shall constitute a good faith attempt and shall be deemed to be in compliance with this subsection, provided that such mark represents only the best available information of the sewer system owner or operator and may not be accurate; and

(ii) If a sewer lateral is unlocatable, a triangular green mark shall be placed at the sewer main pointing at the address in question to indicate the presence of an unlocatable sewer lateral;

(B) Providing electronic copies of or delivering the records through facsimile or by other means to an agreed upon location within 48 hours beginning the next business day after the business day following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days; provided, however, that for local governing authorities that receive fewer than 50 locate requests annually, the local governing authority may designate the agreed upon location and communicate such designation to the excavator;

(C) Arranging to meet the excavator on site to provide the best available information about the location of the sewer laterals;

(D) Providing the records through other processes and to other locations approved by documented agreement between the excavator and the facility owner or operator; or

(E) Any other reasonable means of conveyance approved by the commission after receiving recommendations from the advisory committee, provided that such means are equivalent to or exceed the provisions of subparagraph (A), (B), or (C) of this paragraph.

~~(b)~~(c) Each facility owner or operator, either upon determining that no utility facility or sewer lateral is present on the tract or parcel of land or upon completion of the designation of the location of any utility facilities or sewer laterals on the tract or parcel of land as required by subsection (a) or (b) of this Code section, shall provide this information to the ~~utilities protection center~~ UPC in accordance with procedures developed by the ~~utilities protection center~~ UPC, and which may include the use of the ~~Ticket Information Exchange System~~ PRIS. In no event shall such notice be provided later than midnight of the second

business day following receipt by the ~~utilities protection center~~ UPC of actual notice filed in accordance with Code Section 25-9-6.

~~(c)~~(d) In the event the facility owner or operator is unable to designate the location of the utility facilities or sewer laterals due to extraordinary circumstances, the facility owner or operator shall notify the ~~utilities protection center~~ UPC and provide an estimated completion date in accordance with procedures developed by the ~~utilities protection center~~ UPC, which may include the use of the ~~Ticket Information Exchange System~~ PRIS.

~~(d)~~(e) If, at the end of the time period specified in ~~subsection (a)~~ subsections (a) and (b) of this Code section, any facility owner or operator has not complied with the requirements of subsections (a), and (b), and (c) of this Code section, as applicable, the ~~utilities protection center~~ UPC shall issue a second request to each such facility owner or operator. If the facility owner or operator does not respond to this additional request by 12:00 Noon of that business day, either by notifying the ~~utilities protection center~~ UPC in accordance with procedures developed by the ~~utilities protection center~~ UPC that no utility facilities or sewer laterals are present on the tract or parcel of land, or by designating the location of such utility facilities or sewer laterals in accordance with the provisions of subsections (a) and (b) of this Code section, as applicable, then the person providing notice pursuant to Code Section 25-9-6 may proceed with the excavating or blasting, provided that there is no visible and obvious evidence of the presence of an unmarked utility facility or sewer lateral on the tract or parcel of land. Such person shall not be subject to any liability resulting from damage to the utility facility or sewer lateral as a result of the blasting or excavating, provided that such person complies with the requirements of Code Section 25-9-8.

(f) If visible and obvious evidence of the presence of an unmarked utility facility or sewer lateral does exist and the facility owner or operator either refuses to comply with subsections (a) through (d) of this Code section, as applicable, or is not a member of the UPC, then the excavator shall attempt to designate such facility or sewer lateral prior to excavating. The facility owner or operator shall be liable for the actual costs associated with the excavator designating such utility facilities and sewer laterals. Such costs shall not exceed \$100.00 or documented actual costs, whichever is greater, for each locate request.

~~(e)~~(g) All utility facilities installed by facility owners or operators on or after January 1, 2001, shall be installed in a manner which will make them locatable using a generally accepted electronic locating method ~~by facility owners or operators~~. All sewer laterals installed on or after January 1, 2006, shall be installed in a manner which will make them locatable by facility owners or operators using a generally accepted electronic locating method. In the event that an unlocatable utility facility or unlocatable sewer lateral becomes exposed when the facility owner or operator is present or in the case of sewer laterals when

1 the sewer utility owner or operator is present on or after January 1, 2006, such utility
2 facility or sewer lateral shall be made locatable through the use of a permanent marker or
3 an updating of permanent records.

4 ~~(f)~~(h) Facility owners or operators shall either maintain ~~in a data base~~ recorded information
5 concerning the location and other characteristics of abandoned utility facilities, maintain
6 such abandoned utility facilities in a locatable manner, or remove such abandoned utility
7 facilities. Facility owners or operators shall provide information on abandoned utility
8 facilities, when possible, in response to a locate request or design locate request. When the
9 presence of an abandoned facility within an excavation site is known, the facility owner or
10 operator should attempt to locate and mark the abandoned facility or provide information
11 to the excavator regarding such facilities. When located or exposed, all abandoned utility
12 facilities and sewer laterals shall be treated as live utility facilities and sewer laterals.

13 (i) Notwithstanding any other provision of law to the contrary, a facility owner or operator
14 may use a locator to designate any or all utility facilities and sewer laterals. The use of a
15 locator shall not relieve the facility owner or operator of any responsibility under this
16 chapter. However, by contract a facility owner or operator may be indemnified by a locator
17 for any failure on the part of the locator to comply with the provisions of this chapter.

18 (j) By January 1, 2006, the advisory committee shall propose to the Public Service
19 Commission rules and processes specific to the locating of large projects. These rules shall
20 include, but shall not be limited to, the establishment of detailed processes. Such rules may
21 also include changes in the time period allowed for a facility owner or operator to comply
22 with the provisions of this chapter and to the time period for which designations are valid.
23 The commission shall promulgate rules addressing this subsection no later than June 1,
24 2006.

25 (k)(1) Within 48 hours beginning the next business day after the business day following
26 receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6,
27 excluding hours during days other than business days, each facility owner or operator
28 shall determine whether or not unlocatable facilities other than sewer laterals are present.
29 In the event that such facilities are determined to be present, the facility owner or operator
30 shall exercise reasonable care in locating such facilities. The exercise of reasonable care
31 shall require, at a minimum, the use of the best available information to designate the
32 facilities and notification to the UPC of such attempted location. Placing markers or
33 otherwise leaving evidence of locations of facilities is deemed to be an acceptable form
34 of notification to the excavator or locator.

35 (2) This subsection shall not apply to sewer laterals."

SECTION 7.

Said chapter is further amended by striking Code Section 25-9-8, relating to the obligations of blasters and excavators with regard to utility facilities, and inserting in lieu thereof the following:

"25-9-8.

(a) Persons engaged in blasting or in excavating with mechanized excavating equipment shall not strike, damage, injure, or loosen any utility facility or sewer lateral which has been staked, flagged, or marked in accordance with this chapter.

(b) When excavating or blasting is to take place within the tolerance zone, the excavator shall exercise such reasonable care as may be necessary for the protection of the utility facility or sewer lateral, including permanent markers and paint placed to designate utility facilities. This protection shall include, but may not be limited to, hand digging, pot holing, soft digging, vacuum excavation methods, pneumatic hand tools, other mechanical methods with the approval of the facility owner or operator, or other generally accepted methods. For parallel type excavations, the existing facility shall be exposed at intervals as often as necessary to avoid damages.

(c) When conducting trenchless excavation the excavator must exercise reasonable care, as described in subsection (b) of this Code section, and shall take additional care to attempt to prevent damage to utility facilities and sewer laterals. The recommendations of the HDD consortium applicable to the performance of trenchless excavation set out in the document 'Horizontal Directional Drilling Good Practice Guidelines,' dated May, 2001, are adopted by reference as a part of this subsection to describe such additional care. The advisory committee may recommend to the commission more stringent criteria as it deems necessary to define additional care and the commission is authorized to adopt additional criteria to define additional care.

(d) Any person engaged in blasting or in excavating with mechanized excavating equipment who strikes, damages, injures, or loosens any utility facility or sewer lateral, regardless of whether the utility facility or sewer lateral is marked, shall immediately cease such blasting or excavating and notify the ~~utilities protection center~~ UPC and the appropriate facility owner or operator, if known. Upon receiving notice from the excavator or the ~~utilities protection center~~ UPC, the facility owner or operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the ~~damages~~ damage. Until such time as the damage has been repaired, no person shall engage in excavating or blasting activities that may cause further damage to the utility facility or sewer lateral except as provided in Code Section 25-9-12."

SECTION 8.

Said chapter is further amended by striking subsection (a) of Code Section 25-9-9, relating to the degree of accuracy required in location information for utility facilities, and the effect on liability of inaccurate information, and inserting in lieu thereof the following:

"(a) For the purposes of this chapter, ~~information concerning~~ the location of utility facilities which is provided by a facility owner or operator in accordance with subsection (a) of Code Section 25-9-7 to any person must be accurate to within 24 inches measured horizontally from the outer edge of either side of such utility facilities. If any utility facility becomes damaged by an excavator due to the furnishing of inaccurate information as to its location by the facility owner or operator, such excavator shall not be subject to any liability resulting from damage to the utility facility as a result of the blasting or excavating, provided that such person complies with the requirements of Code Section 25-9-8 and there is no visible and obvious evidence to the excavator of the presence of a mismarked utility facility."

SECTION 9.

Said chapter is further amended by striking Code Section 25-9-12, relating to notice requirements for emergency evacuations, and inserting in lieu thereof the following:

"25-9-12.

The notice requirements provided by Code Section 25-9-6 shall not be required of persons performing emergency excavations or excavation in extraordinary circumstances; provided, however, that any person who engages in an emergency excavation or excavation in extraordinary circumstances shall take all reasonable precautions to avoid or minimize damage to any existing utility facilities and sewer laterals; provided, further, that any person who engages in an emergency excavation or excavation in extraordinary circumstances shall give notice of the emergency excavation as soon as practical to the ~~utilities protection center~~ UPC. In giving such notice, such person must specifically identify the dangerous condition involved. If it is later determined ~~by the commission~~ that the excavation did not qualify as an emergency excavation, all liabilities and penalties will accrue as if no notice had been given."

SECTION 10.

Said chapter is further amended by striking Code Section 25-9-13, relating to penalties for violations of the chapter, and inserting in lieu thereof the following:

1 "25-9-13.

2 (a) Any person who violates the requirements of Code Section 25-9-6 and whose
3 subsequent excavating or blasting damages utility facilities or sewer laterals shall be strictly
4 liable for:

5 (1) ~~Any cost~~ All costs incurred by the facility owner or operator in repairing or replacing
6 its damaged facilities; and

7 (2) Any injury or damage to persons or property resulting from damaging the utility
8 facilities and sewer laterals.

9 (b) Each local governing authority is authorized to require by ordinance any bonds on
10 utility contractors or on persons performing excavation or blasting within the public right
11 of way or any dedicated utility easement as it may determine to assure compliance with
12 subsection (a) of this Code section.

13 ~~(b)(c)~~ Any ~~such~~ person who violates the requirements of Code Section 25-9-6 and whose
14 subsequent excavating or blasting damages utility facilities or sewer laterals shall also
15 indemnify the affected facility owner or operator against all claims or costs incurred, if any,
16 for personal injury, property damage, or service interruptions resulting from damaging the
17 utility facilities and sewer laterals. Such obligation to indemnify shall not apply to any
18 county, city, town, or state agency to the extent permitted by law. In any civil action by a
19 facility owner or operator to recover the costs of repairing or replacing facilities damaged
20 through violation of Code Section 25-9-6 or 25-9-8, those costs shall be calculated utilizing
21 generally accepted accounting principles.

22 ~~(c)(d)~~ In addition to the other provisions of this Code section, a professional licensing
23 board shall be authorized to suspend or revoke any professional or occupational license,
24 certificate, or registration issued to a person pursuant to Title 43 whenever such person
25 violates the requirements of Code Section 25-9-6 or 25-9-8.

26 ~~(d)(e)~~ Subsections (a), ~~(b)~~ (c), and ~~(c)~~ (d) of this Code section shall not apply to any person
27 who shall commence, perform, or engage in blasting or in excavating with mechanized
28 equipment on any tract or parcel of land in any county in this state if the facility owner or
29 operator to which notice was given respecting such blasting or excavating with mechanized
30 equipment as prescribed in subsection (a) of Code Section 25-9-6 has failed to comply with
31 Code Section 25-9-7 or has failed to become a member of the ~~utilities protection center~~
32 UPC as required by Code Section 25-9-5.

33 ~~(e)(f)~~ The commission shall enforce the provisions of this chapter. The commission may
34 promulgate any rules and regulations necessary to implement the commission's authority
35 to enforce this chapter.

36 ~~(f)(g)(1) The commission shall create an advisory committee~~ The Governor shall appoint
37 an advisory committee consisting of persons who are employees or officials of or who

represent the interests of: ~~representatives of the following groups and agencies: facility owners or operators; utilities protection center; excavators; municipalities; counties; Georgia Department of Transportation; Governor's Office of Consumer Affairs; and underground line locators. The advisory committee shall consist of one representative from each of the above groups and agencies, with the exception of facility owners or operators and excavators, which groups shall each have two representatives on the advisory committee. The commission chairperson or such chairperson's representative shall also serve on the advisory committee.~~

(A) One member to represent the Georgia Department of Transportation;

(B) One member to represent water systems or water and sewer systems owned or operated by local governing authorities;

(C) One member to represent the utilities protection center;

(D) One member to represent water systems or water and sewer systems owned or operated by counties;

(E) One member to represent water systems or water and sewer systems owned or operated by municipalities;

(F) One member to represent the nonmunicipal electric industry;

(G) Three members to represent excavators;

(H) One member to represent locators;

(I) One member to represent the nonmunicipal telecommunications industry;

(J) One member to represent the nonmunicipal natural gas industry;

(K) One member to represent municipal gas, electric, or telecommunications providers;
and

(L) The commission chairperson or such chairperson's designee.

The commission chairperson or his or her designee shall serve as chairperson of the advisory committee and shall cast a vote only in the case of a tie. Persons appointed to the advisory committee shall have expert knowledge of this chapter and specific operations expertise with the subject matter encompassed by the provisions of this chapter. The new advisory committee shall be established within 60 days of the effective date of this subsection.

(2) The advisory committee shall assist the commission in the enforcement of this chapter, make recommendations to the commission regarding rules and regulations, and shall perform duties to be assigned by the commission including, but not limited to, the review of reported violations of this chapter; and the preparation of recommendations to the commission as to the appropriate penalties to impose on persons violating the provisions of this chapter.

1 (3) The members of the advisory committee shall be immune, individually and jointly,
2 from civil liability for any act or omission done or made in the performance of their duties
3 while serving as members of such advisory committee, but only in the absence of willful
4 misconduct.

5 ~~(g)(h)(1) The commission may, by judgment entered after a hearing on notice duly~~
6 ~~served on any person not less than 30 days before the date of the hearing, impose a civil~~
7 ~~penalty not exceeding \$10,000.00 for each violation, if it is proved that the person~~
8 ~~violated any of the provisions of this chapter, as a result of a failure to exercise~~
9 ~~reasonable care. Any proceeding or civil penalty undertaken pursuant to this Code section~~
10 ~~shall not prevent nor preempt the right of any party to obtain civil damages for personal~~
11 ~~injury or property damage in private causes of action. Except as otherwise provided by~~
12 ~~law, this subsection shall not authorize the commission to impose civil penalties on any~~
13 ~~county, city, town, or state agency. The commission shall inform the counties, cities,~~
14 ~~towns, or state agencies of reports of alleged violations involving the county, city, town,~~
15 ~~or state agency and, at the request of the county, city, town, or state agency, suggest~~
16 ~~corrective action. The fine provided for in this subsection shall not be imposed on a~~
17 ~~person engaged in farming activities on land such person owns or leases. Commission~~
18 ~~enforcement of this chapter shall follow the procedures described in this subsection.~~
19 ~~Nothing in this subsection shall limit the authority of the commission delegated from the~~
20 ~~federal government and authorized in other state law.~~

21 (2)(A) The commission is not authorized to impose civil penalties on any local
22 governing authority except as provided in this paragraph. The commission may
23 recommend training for local governing authorities in response to any probable or
24 proven violation. On or after January 1, 2007, civil penalties may be recommended for
25 or imposed on any local governing authority for refusal to comply with the
26 requirements of Code Section 25-9-7 or for other violations of Code Section 25-9-7 that
27 result in injury to people, damage to property, or the interruption of utility service in the
28 event that investigators find that a local governing authority has demonstrated a pattern
29 of willful noncompliance. Civil penalties may be recommended or imposed on or after
30 January 1, 2006, for violations of provisions of this chapter other than Code Section
31 25-9-7 in the event that investigators find that the severity of an excavation violation
32 warrants civil penalties or that a local governing authority has demonstrated a pattern
33 of willful noncompliance. Any such civil penalty shall be recommended or imposed in
34 accordance with a tiered penalty structure designed for local governing authorities. In
35 the event that the investigators determine that a local governing authority has made a
36 good faith effort to comply with this chapter, the investigators shall not recommend a
37 civil penalty. For purposes of this subsection 'refusal to comply' means that a utility

1 facility owner or operator does not respond in PRIS to a locate request, does not
2 respond to a direct telephone call to locate their facilities, or other such direct refusal.
3 Refusal to comply does not mean a case where the volume of requests or some other
4 mitigating circumstance prevents the utility owner or operator from locating in
5 accordance with Code Section 25-9-7.

6 (B) No later than January 1, 2006, the advisory committee shall recommend to the
7 commission for adoption a tiered penalty structure for local governing authorities. Such
8 structure shall take into account the size, annual budget, gross receipts, number of
9 utility connections and types of utilities within the territory of the local governing
10 authority. Such penalty structure shall also take into account the number of locate
11 tickets received annually by the local governing authority, the number of locate codes
12 made annually to the local governing authority from the UPC, the number of utility
13 customers whose service may have been interrupted by violations of this chapter, and
14 the duration of such interruptions. Such penalty structure shall also consider the cost of
15 compliance. The penalty structure shall establish for each tier the maximum penalty per
16 violation and per 12 month period at a level to induce compliance with this chapter.
17 Such maximum penalty shall not exceed \$5,000.00 per violation or \$50,000.00 per 12
18 month period for the highest tier.

19 (3) If commission investigators find that a probable violation has occurred, they may
20 recommend training in lieu of penalties to any person for any violation. The commission
21 shall provide suggestions for corrective action to any person requesting such assistance.
22 Commission investigators shall make recommended findings or offers of settlement to
23 the respondent.

24 (4) Any respondent may accept or disagree with the settlement recommended by the
25 investigators. If the respondent disagrees with the recommended settlement, the
26 respondent may dispute the settlement recommendation to the advisory committee. The
27 advisory committee shall then render a recommendation either supporting the
28 investigators' recommendation, rejecting the investigators' recommendation, or
29 substituting its own recommendation. With respect to an investigation of any probable
30 violation committed by a local governing authority, any recommendation by the advisory
31 committee shall be in accordance with the provisions of paragraph (2) of this subsection.
32 In its deliberations the advisory committee shall consider the gravity of the violation or
33 violations; the degree of the respondent's culpability; the respondent's history of prior
34 offenses; and such other mitigating factors as may be appropriate. If the advisory
35 committee determines that a respondent has made a good faith effort to comply with this
36 chapter, the committee shall not recommend civil penalties against the respondent.

1 (5) If any respondent disagrees with the recommendation of the advisory committee,
2 after notice and hearing by a hearing officer or administrative law judge, such officer or
3 judge shall make recommendations to the commission regarding enforcement, including
4 civil penalties. Any such recommendations relating to a local governing authority shall
5 comply with the provisions of paragraph (2) of this subsection. The acceptance of the
6 recommendations by the respondent at any point will stop further action by the
7 investigators in that case.

8 (6) When the respondent agrees with the advisory committee recommendation, the
9 investigators shall present such agreement to the commission. The commission is then
10 authorized to adopt the recommendation of the advisory committee regarding a civil
11 penalty, or to reject such a recommendation. The commission is not authorized to impose
12 a civil penalty greater than the civil penalty recommended by the advisory committee or
13 to impose any civil penalty if the advisory committee does not recommend a civil penalty.

14 (7) The commission may, by judgment entered after a hearing on notice duly served on
15 any person not less than 30 days before the date of the hearing, impose a civil penalty not
16 exceeding \$10,000.00 for each violation, if it is proved that the person violated any of the
17 provisions of this chapter as a result of a failure to exercise additional care in accordance
18 with subsection (c) of Code Section 25-9-8 or reasonable care in accordance with other
19 provisions of this chapter. Any such recommendations relating to a local governing
20 authority shall comply with the provisions of paragraph (2) of this subsection. Any
21 proceeding or civil penalty undertaken pursuant to this Code section shall neither prevent
22 nor preempt the right of any party to obtain civil damages for personal injury or property
23 damage in private causes of action except as otherwise provided in this chapter.

24 ~~(h)~~(i) All civil penalties ordered by the commission and collected pursuant to this Code
25 section shall be deposited in the general fund of the state treasury."

26 **SECTION 11.**

27 All laws and parts of laws in conflict with this Act are repealed.